

I hope that we can also take the time to consider the rest of the Seniors Safety Act, and enact even more comprehensive protections for our seniors. The Seniors Safety Act offers a comprehensive approach that would increase law enforcement's ability to battle telemarketing, pension, and health care fraud, as well as to police nursing homes with a record of mistreating their residents. The Justice Department has said that the Seniors Safety Act would "be of assistance in a number of ways." I have urged the Chairman of the Senate Judiciary Committee to hold hearings on the Seniors Safety Act as long ago as October 1999, and again this past February, but my requests have not been granted. Now, as the session is coming to a close, we are out of time for hearings on this important and comprehensive proposal and significant parts of the Seniors Safety Act remain pending in the Senate Judiciary Committee as part of the unfinished business of this Congress.

Let me briefly summarize the parts of the Seniors Safety Act that the majority in the Congress declined to consider. First, the Seniors Safety Act provides additional protections to nursing home residents. Nursing homes provide an important service for our seniors—indeed, more than 40 percent of Americans turning 65 this year will need nursing home care at some point in their lives. Many nursing homes do a wonderful job with a very difficult task—this legislation simply looks to protect seniors and their families by isolating the bad providers in operation. It does this by giving federal law enforcement the authority to investigate and prosecute operators of those nursing homes that engage in a pattern of health and safety violations. This authority is all the more important given the study prepared by the Department of Health and Human Services and reported this summer in the New York Times showing that 54 percent of American nursing homes fail to meet the Department's "proposed minimum standard" for patient care. The study also showed that 92 percent of nursing homes have less staff than necessary to provide optimal care.

Second, the Seniors Safety Act helps protect seniors from telemarketing fraud, which costs billions of dollars every year. This legislation would give the Attorney General the authority to block or terminate telephone service where that service is being used to defraud seniors. If someone takes your money at gunpoint, the law says we can take away their gun. If someone uses their phone to take away your money, the law should allow us to protect other victims by taking their phone away. In addition, this proposal would establish a Better Business Bureau-style clearinghouse that would keep track of complaints made about telemarketing companies. With a simple phone call, seniors could find out whether the company trying to sell to

them over the phone or over the Internet has been the subject of complaints or been convicted of fraud. Senator BAYH has recently introduced another bill, S. 3025, the Combating Fraud Against Seniors Act, which includes the part of the Seniors Safety Act that establishes the clearinghouse for telemarketing fraud information.

Third, the Seniors Safety Act punishes pension fraud. Seniors who have worked hard for years should not have to worry that their hard-earned retirement savings will not be there when they need them. The bill would create new criminal and civil penalties for those who defraud pension plans, and increase the penalties for bribery and graft in connection with employee benefit plans.

Finally, the Seniors Safety Act strengthens law enforcement's ability to fight health care fraud. A recent study by the National Institute for Justice reports that many health care fraud schemes "deliberately target vulnerable populations, such as the elderly or Alzheimer's patients, who are less willing or able to complain or alert law enforcement." This legislation gives law enforcement the additional investigatory tools it needs to uncover, investigate, and prosecute health care offenses in both criminal and civil proceedings. It also protects whistle-blowers who alert law enforcement officers to examples of health care fraud.

I commend Senators BAYH, GRAMS and CLELAND for working to take steps to improve the safety and security of America's seniors. We are doing the right thing today in passing this bipartisan legislation and beginning the fight to lower the crime rate against seniors. I also urge my colleagues to consider and pass the Seniors Safety Act. Taken together, these two bills would provide a comprehensive approach toward giving law enforcement and older Americans the tools they need to prevent crime.

On March 27, 2000, the Senate passed H.R. 1658, the Civil Asset Forfeiture Reform Act of 2000. This was an important step forward and I want to thank Mr. HYDE, Mr. CONYERS and Senators SESSIONS, BIDEN, SCHUMER and all others who worked with us in good faith to enact these long overdue reforms. At the same time, there was some unfinished business in connection with this legislation that a Hatch-Leahy amendment to H.R. 46 completes.

The bill that the Senate passed by unanimous consent on March 27th was supposed to be a substitute amendment to H.R. 1658. I had been led to believe that the substitute was word-for-word that which I had painstakingly worked out over the preceding weeks for approval by the Senate Committee on the Judiciary the previous Thursday, March 23, 2000. Imagine my surprise to see reprinted in the RECORD the next day a substitute amendment at variance with the version to which I had agreed to and at variance with the language that had been circulated to and approved by the Committee.

Specifically, the agreed upon version of the bill would amend section 983(a)(2)(C) of title 18, United States Code, to describe what a claimant in a civil asset forfeiture case must state to assert a claim. The amendment to which I agreed and which the Judiciary Committee "ordered reported" requires that a "claim shall—(i) identify the specific property being claimed; (ii) state the claimant's interest in such property; and (iii) be made under oath, subject to penalty of perjury."

By contrast, the version of the amendment submitted to the Senate for passage contained the following additional clause in subparagraph (ii): "state the claimant's interest in such property (and provide customary documentary evidence of such interest if available) and state that the claim is not frivolous". I did not approve the language inserted in the version considered by the Senate and this language was not approved by the Judiciary Committee.

This inserted language is superfluous, at best, since the claim must already be made under oath and penalty of perjury. At worst, this inserted language is an invitation for mischief in an area where the record has already amply demonstrated overreaching by law enforcement agencies. For example, if a claimant provides only partial paperwork supporting a claim to property seized by the government, would the claim be subject to dismissal for failure to state a claim? If a claimant certifies that the claim is not frivolous, as required by the inserted language, and a court ultimately determines otherwise, would the claimant be put at risk of a perjury prosecution? Even the threat of such risks puts additional burdens on claimants and may dissuade claimants from filing claims.

For these reasons, I had objected to insertion of this language and approved a substitute amendment that did not contain this problematic insert. Moreover, the version of that substitute amendment "ordered reported" by the Judiciary Committee and in the Committee's official files simply does not contain that problematic insert.

We rely every day on each other and on the professionalism of our staffs. Having raised my concern about the change as soon as it was discovered, I am pleased that Chairman HATCH has worked with me to pass a correction to the law that strikes the language that was added without agreement.

HERITAGE HARBOR MUSEUM NATIVE AMERICAN HISTORY

Mr. L. CHAFEE. Mr. President, today I rise to thank the chairman of the Senate Appropriations Subcommittee on Treasury and General Government, Senator CAMPBELL, for including funds for the National Historical Publications and Records Commission to provide a grant to the Heritage Harbor Museum in Providence for the development of the museum's Native American Story exhibit.

The funds will be used by the Museum and the local Native American community to research and catalog the history of the area's Native Americans in a cross-cultural context. As the chairman knows, Heritage Harbor revolves around the telling of our nation's history in an integrated environment. The museum will not focus on one ethnic or religious group but strive to present the independent and coexisting histories of many of our nation's peoples.

The task ahead for Heritage Harbor is a complex one, and I appreciate the committee underscoring the federal interest in the project by providing these funds. In order for the Native American perspective to be presented effectively, the museum will not only research records, data and artifacts, but it will also catalog the research and present it in formal exhibit fashion.

Is it the understanding of the Chairman that these funds are intended to be used for research and cataloging as well as exhibit presentation?

Mr. CAMPBELL. That is my understanding.

Mr. L. CHAFEE. Again, I thank the Senator for his interest in this project, and I look forward to inviting you to Rhode Island to see the results of the museum's effort.

PASSAGE OF S. 1854

Mr. LEAHY. Mr. President, last Thursday, the Senate passed the Hatch-Leahy-DeWine-Kohl substitute amendment to S. 1854, the "Hart-Scott-Rodino Antitrust Improvements Act," that will make significant improvements to this important antitrust law. Section 7 of the Clayton Act, as amended by the Hart-Scott-Rodino Act of 1976 (HSR), requires companies that plan to merge to notify the Justice Department's Antitrust Division and the Federal Trade Commission of their intention and submit certain information. HSR pre-merger notifications provide advance notice of potentially anti-competitive transactions and allow the antitrust agencies to block mergers before they are consummated, which is easier than undoing them after-the-fact.

Since passage of the Hart-Scott-Rodino Act, this law has worked well to help the American economy flourish, despite larger and more complex mergers and consolidations within and among different industries. The Hatch-Leahy-DeWine-Kohl substitute amendment to S. 1854, the "Hart-Scott-Rodino (HSR) Antitrust Improvements Act," will update this law and make it work even better.

Specifically, the substitute would raise the minimum threshold for the "size of the transaction" required to provide HSR notifications from \$15,000,000 to \$50,000,000. Thus, no pre-merger filing will be required if the transaction is valued at less than \$50,000,000. A pre-merger filing would always be required if the size of the

transaction is valued at more than \$200,000,000. With regard to transactions valued at between \$50,000,000 and \$200,000,000, the amendment would require pre-merger filing if the total assets or net annual sales of one party are over \$100,000,000 annually while the other party's total assets or net annual sales are over \$10,000,000 annually. The thresholds may be adjusted by the FTC every three years to reflect the percentage change in the gross national product for that period. These threshold changes are supported by the antitrust agencies.

The remaining part of the substitute directs the Federal Trade Commission and the DOJ's Antitrust Division to implement regulations to improve the manner in which these agencies obtain information as part of the review of a proposed merger. The antitrust agencies do not object to these parts of the substitute amendment.

As explained in more detail below, this substitute addresses the most significant flaws in the original bill.

To appreciate the issues addressed in the bill, the pre-merger review procedures currently in effect must be understood. Upon receipt of the merger notification, the agency takes a "quick look" and determines whether to open a Preliminary Investigation, PI. A PI may take from a few weeks to several months to determine whether to close the PI or proceed with a Second Request or Civil Investigative Demand, CID, for additional information. Second Requests were issued in only 2.5 percent of reported transactions in 1999.

Under statutory time limits, the Second Request must be made within 30 days from the initial filing. In addition, only a single Second Request is allowed so it must be complete. This Second Request extends the waiting period before the merger may be completed for up to 20 days from the time that all responsive documents are submitted to the agency. Second requests for voluminous documents, combined with the requirement that "all responsive documents" have been supplied by the companies to the agency, can cause substantial delays in the waiting period and the time when a merger may be completed.

To address business concerns over broad second requests and the delay such requests may cause, the original bill substantially limited the scope of agencies' second requests and authorized judicial review of both the scope of and compliance with these critical requests, as detailed below.

First, the original bill would have limited the scope of second requests to information or documents "not unreasonably cumulative or duplicative" and that "do not impose a burden or expense that substantially outweighs the likely benefit of the information to the agency." The antitrust agencies raised significant, valid questions about whether these limitations were workable. In particular, at the time a sec-

ond request is issued, an agency generally cannot evaluate the cost/benefit tradeoff because it does not know the costs of production, and has only limited knowledge about the potential benefits of the information for the investigation (in part because the anti-competitive issues are often still indefinite). The documents themselves provide this information.

The bill would also have required the antitrust agency to provide, with each second request, a specific summary of the competitive concerns presented by the proposed acquisition and the relation between such concerns and the second request specifications. The antitrust agencies questioned this requirement because anticompetitive concerns are still often general and evolving at the time a second request is issued. Consequently, a specific summary may not be possible at that time and would likely be incomplete since additional competitive concerns may be discovered during the investigation. Furthermore, according to the agencies, this requirement was unnecessary since they ordinarily provide a general explanation of their concerns and provide more specific information as it develops, in face-to-face conferences between parties (or their counsel) and investigating staff.

Second, the original bill would have limited the agencies' ability to claim that the production of documents in response to a second request is deficient only if the deficiency "materially impairs the ability of the agency to conduct a preliminary antitrust review." This proposed standard for claiming deficiency (that is, for requiring further document production) is higher than the ordinary standard for discovery and would limit the agency's ability to investigate, especially given HSR's stringent time frames and the fact that the second request is the single opportunity to seek information in a premerger review. This could have seriously harmed the agency's posture in court, as courts often examine the entire substance of the agency's case even in a preliminary injunction action.

Finally, the original bill would have authorized a merging company to seek review by a magistrate judge of both the scope of the second request and any claim of deficient production. The magistrate was required to apply the scope and deficiency standards described above, which impose more limits on antitrust agencies than general civil discovery rules. Moreover, magistrates were unlikely to be familiar with the types of information that form the basis for the complex antitrust analysis required in predicting likely future competitive effects of a proposed transaction—a shortcoming with possible adverse consequences for antitrust agencies seeking relevant information for an investigation since